

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4536 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

REVABEN WD/O. REVADAS N MACHHIPATEL

Versus

DIST.MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr. Nigam Shukla, learned Addl.P.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 24/09/96

ORAL JUDGMENT ;

1. Through this Special Civil Application filed under S.226 of the Constitution of India, the petitioner seeks to challenge the detention order dated 12-4-96 passed by the District Magistrate, Bharuch under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (herein-after referred to as 'the Act'), which was executed against her on 14-4-96.

2. The petitioner is a widow and the grounds of detention show that during the year 1995-96 six cases of bootlegging were registered against her under the provisions of Prohibition Act. Out of these six cases, at the time of passing the detention order, four cases of 1995 were pending in the court and two cases of 1996 were under police investigation. The grounds of detention also show that in all these six cases she was bailed out by the Police on furnishing a personal bond for a sum of Rs.500/- and surety of the like amount. Besides the aforesaid cases under the provisions of the Prohibition Act, statements of certain witnesses were recorded against her on 13-3-96, 14-3-96, 21-3-96 and 22-3-96. The petitioner has made a grievance that the names and addresses of these witnesses were not disclosed to her and that the persons, whose statements have been recorded, are stock witnesses of the police, who are under the thumb of the police and that she has not been supplied with the copies of the Panchanamas in the criminal cases, which are mentioned against her in the grounds of detention and she, therefore, could not make effective representation to the State Government, the detaining authority and the Advisory Board. It has also been submitted that she had made a representation through the advocate to the detaining authority on 27-6-96, but the fate of the representation is not known. She had also made a grievance that the last criminal case, which was registered against her, is dated 21-3-96, but the detention order was passed as late as on 12-4-96. It is also stated that the statements had not been verified by the detaining authority. The grievance has also been raised that bail orders, granted in the criminal cases mentioned in the grounds of detention, were not supplied.

3. The present Special Civil Application had been filed on 1-7-96 and on 2-7-96 Rule returnable for 2-8-96 was issued, but no return has been filed by the respondents nor any affidavit of the detaining authority has been filed. It has been orally submitted by the learned Addl. P. P. that the detenu had made a representation on 15-5-96, which was received on 16-5-96 and the same was rejected on 18-5-96. The learned Addl. P.P. is not in a position to say as to what has been the fate of the representation dated 27-6-96 as the record of the detaining authority is not available with him.

4. I have heard learned counsel for the parties. The grounds of detention show that six cases, which are registered against her, are dated 1-8-95, 6-8-95,

27-8-95, 25-9-95, 12-2-96 and 25-3-96 and all these cases relate to the Police Station, Bharuch Rural in which the cases have been registered under Sections 66(1)(b), 65(e) and 65(f) of the Prohibition Act with regard to few liters of liquor and wash liquor worth Rs.40/- to Rs.360/-. Apart from these cases of prohibition, reliance has been placed on the statements of certain witnesses recorded on 13-3-96, 14-3-96, 21-3-96 and 22-3-96 and on that basis it has been concluded that she is a bootlegger and has been engaged in anti social activities resulting into public disorder and that in case the names and addresses of the witnesses are disclosed to her, it may be injurious to the person and property of the witnesses and, therefore, the privilege under S.9(2) of the Act had been availed.

5. Apart from the fact that no affidavit -in- reply has been filed by the respondents, I find from the grounds of detention that the detaining authority after referring to the details of the criminal cases pending in the Court and pending investigation with the police against the petitioner has referred to the statements of certain witnesses as recorded between 13-3-96 and 22-3-96 and has proceeded to conclude that the petitioner's detention is warranted. The grounds of detention as such do not inspire confidence that the detaining authority had taken due care to evaluate the grounds for detention and there is a total lack of due and active application of mind while considering that the detention was warranted. There is no explanation whatsoever for the period from 21/22-3-96 i.e. the date on which the last criminal case was registered against the petitioner or the last date on which the statements of the witnesses were recorded against her and the date of order of detention i.e. 12-4-96. Nor it has been pointed out as to what happened to her representation dated 27-6-96. She is under detention since 14-4-96 and in such matters if the delay in passing the detention order is not properly explained and despite service of the notice by this court, the detaining authority fails to explain the delay and ignorance is pleaded about the fate of the representation made by the detenu, the life and liberty of the citizens can not be put to jeopardy indefinitely. In the facts and circumstances of this case, I find that the petitioner's detention can not be sustained and in any case the continued detention appears to be wholly unwarranted when the respondents are sitting tight over her representation dated 27-6-96.

6. Accordingly the petition is allowed. The detention order dated 12-4-96 passed by the District

Magistrate, Bharuch is hereby quashed and set aside and the detenu is directed to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

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